

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL DILWORTH,

Defendant-Appellant.

UNPUBLISHED

April 23, 1999

No. 205018

Recorder's Court

LC No. 93-005942

Before: O'Connell, P.J. and Jansen and Collins, JJ.

MEMORANDUM.

Defendant pleaded guilty to armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2), in exchange for dismissal of a charge of unlawfully driving away an automobile, MCL 750.413; MSA 28.645, and an agreement for a sentence of four to twenty years' imprisonment on the armed robbery charge. In accordance with the sentence agreement and the requests of defendant and his counsel at sentencing, the trial court sentenced defendant to four to twenty years' imprisonment on the armed robbery conviction plus the mandatory two-year consecutive term for felony-firearm. Defendant appeals by right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that his sentence of four to twenty years' imprisonment for armed robbery violates the principle of proportionality because the trial court failed to give due consideration to defendant's background, mitigating factors and first-time offender status. However, as plaintiff notes, defendant's sentence agreement waives any challenge to the proportionality of the sentence to the offense and offender. *People v Cobbs*, 443 Mich 276, 285; 505 NW2d 208 (1993). Moreover, because the minimum sentence is within the three- to eight-year guidelines sentence range, it is presumptively proportionate, and defendant has failed to identify the kind of unusual circumstances that would be sufficient to overcome the presumption

of proportionality. *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins